

REMARKS/ARGUMENTS

Claims 1, 6, 9-11 and 13-34 stand rejected in the outstanding Official Action. Claims 1, 13, 33 and 34 have been amended and therefore claims 1, 6, 9-11 and 13-34 remain in this application.

The Examiner's confirmation of PTO acceptance of the recently filed corrected formal drawings is very much appreciated. Additionally, the Examiner's consideration of Applicant's previously submitted Information Disclosure Statements is very much appreciated.

The Patent Office objects to the arrangement of the specification. It is also appreciated that the Examiner has brought the arrangement of the specification to the applicant's attention. It is noted that the objection to the arrangement appears to be an indication that the originally filed specification and drawings (transmitted from WIPO) does not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

"if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations." Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office may not require specification format changes as long as the originally submitted documents comply with the PCT requirements. Inasmuch as this

specification was forwarded from WIPO, by definition, it meets the PCT requirements (it is not forwarded until it meets PCT requirements.). Therefore, the objection to the specification is respectfully traversed and reconsideration thereof is respectfully requested.

Notwithstanding the above, applicant has added headings and subheadings to the specification.

In section 2 on page 3 of the Official Action, claim 1 is objected to. Applicant has amended claim 1 to specifically indicate that the signal is indicative of said DC supply voltage, thereby obviating any further clarity objection.

Claims 1, 6, 9-11, 13-15, 20, 21, 23-25, 28 and 30-32 stand rejected under 35 USC §102 as being anticipated by Dyer (U.S. Patent 4,585,986). The Court of Appeals for the Federal Circuit has noted in the case of *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 USPQ 481, 485 (Fed. Cir. 1984) that "[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Applicant's independent claim 1 specifies a "voltage sensor" for producing a signal indicative of said DC supply voltage. The Examiner suggests that this is disclosed in column 4, lines 3-10 of the Dyer reference. However, this disclosure in Dyer is the output voltage and has nothing to do with the DC supply voltage. The voltage referenced by the Examiner is the voltage across the coaxial shunt 27 which provides an output indicative of the voltage and current at the output, and not the supply.

It should be noted that there is no link in general between the output voltage and the DC supply voltage. For example, in the case where the two transistors in Dyer's arrangement are switched off and the load is disconnected from the DC supply, current nevertheless will continue

to flow through the load due to the properties of the inductive load and its collapsing electromagnetic field. This collapsing field and the reducing current flow through the load will generate a corresponding voltage signal across the coaxial shunt. Obviously this load current induced voltage signal is not indicative of any aspect of the DC supply voltage because the DC supply voltage at that stage is disconnected from the load. Thus, the DC supply voltage could be zero or some other arbitrary non-zero voltage, but the voltage across the coaxial shunt will be solely indicative of the changing current flow through the shunt.

Thus, the alleged "measurement device 27" (as referenced in the Official Action at page 4, line 7) cannot provide any indication of the DC supply voltage. Accordingly, claim 1 and claims 6 and 9-11 dependent thereon cannot possibly be anticipated by the Dyer reference, since all claimed structures are not shown in the cited prior art reference.

Method claim 13 has been amended to more clearly indicate that the first and second signals are generated with reference to the voltage demand signal and with reference to an indication of the DC supply voltage. As noted above, because the Dyer reference contains no sensor or measurement of the DC supply voltage, it cannot possibly disclose the generation of steps with reference to the DC supply voltage. The above comments pointing out that Dyer fails to teach any indication of the DC supply voltage are herein incorporated by reference. As a result of the above, claim 13 and claims 14-34 dependent thereon cannot possibly be anticipated by the Dyer reference and any further rejection thereunder is respectfully traversed.

Applicant also notes that claim 13 requires that the first and second switching signals be generated such that "an average voltage of the electrical signal supplied to the output during the period is substantially equal to the desired voltage." Dyer simply makes no mention of

maintaining a demanded average voltage at the output over a period. Actually Dyer does not even attempt to maintain a demanded average current during a period of operation of the apparatus.

There is no disclosure or structure or explanation of how to supply or maintain a demanded average value for any characteristic in the Dyer reference. Should the Examiner believe otherwise, he is respectfully requested to not only identify the structure, but also the disclosure in the Dyer reference of such "average voltage of the electrical signal supplied to the output during the period is substantially equal to the desired voltage." Absent any such specific indication, the Dyer reference cannot possibly anticipate the subject matter of claim 13 and any further rejection of claim 13 or claims 14-34 dependent thereon is respectfully traversed.

Paragraphs 6-9 in the outstanding Official Action relate to rejections of various dependent claims under the provisions of 35 USC §103 as unpatentable over Dyer when combined with a number of different references. Inasmuch as each of these rejections relies upon the primary Dyer reference, the above comments distinguishing the Dyer patent from the subject matter of claim 13 are herein incorporated by reference.

Additionally, it is noted that in each of sections 6-9, there is no allegation by the Examiner that the supplemental reference (Durif in section 6, Wilcox in section 7, Ramarathnam in section 8 and Smedley in section 9) teaches the subject matter identified in claim 13 which is missing from the Dyer reference, i.e., "an indication of the DC supply voltage" or "an average voltage of the electrical signal supplied to the output during the period." Inasmuch as the secondary reference in each instance fails to supply the missing teaching of the primary reference, even the combination of the cited references cannot disclose the subject matter in

claim 13, let alone the subject matter in the dependent claims. Accordingly, any further rejection of the claims addressed in sections 6-9 of the Official Action is respectfully traversed.

Claims 1, 6, 11, 13-20 and 23-34 stand rejected on the grounds of a "provisional" (see section 11, page 15) obviousness-type double patenting as unpatentable over the claims in application No. 10/500,639 in view of Dyer. While the Examiner has not stated any statutory ground for this obviousness-type double patenting rejection, he apparently ignores that both the present application and the co-pending application have a common inventive entity and were filed on the same date, i.e., July 2, 2004. Since the co-pending application has not issued, at present the only double patenting rejection which can be sustained is a provisional double patenting rejection. As the Manual of Patent Examining Procedure (MPEP) §804(I)(B) specifies, in a provisional double patenting rejection, the examiner should allow one application to issue and then institute the obviousness-type double patenting rejection in the co-pending application.

Therefore, Applicant respectfully traverses the non-statutory obviousness-type double patenting rejection because the co-pending application is Applicant's own invention filed concurrent with the present application and has not issued as a patent.

Accordingly, any further rejection of claims 1, 6, 11, 13-20 and 23-34 under the obviousness-type double patenting basis is respectfully traversed, given that the inventive entity in both cases is the same, that the filing date of both cases is the same and that no patent has issued as yet in either case.

Moreover, it is unknown as to how and where under double patenting rejection practice there is a basis for combining the co-pending application with the Dyer reference. If another reference is needed to anticipate or render obvious the claimed invention, by definition it is not

the same application as the copending application. Accordingly, any further double patenting rejection over the combination of the co-pending application with the Dyer patent is respectfully traversed. As noted above, the Dyer reference fails to disclose various structures and method steps required by independent claims 1 and 13 and therefore any further rejection thereunder is respectfully traversed.

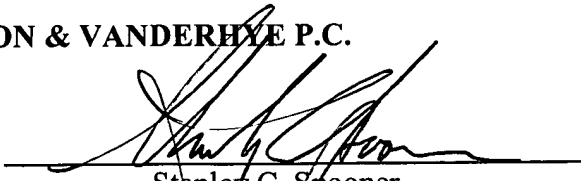
Applicant has recently become aware of prior art cited in a corresponding foreign application and encloses the appropriate Information Disclosure Statement making of record those references.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1, 6, 9-11 and 13-34 are in condition for allowance and notice to that effect is respectfully requested. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

Respectfully submitted,

NIXON & VANDERHIE P.C.

By: _____


Stanley C. Spooner
Reg. No. 27,393

SCS:kmm
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100